

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

**LYDIA BLACKMON and
TIFFANY BLACKMON**

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:05CV91LN

**CARROLL COUNTY SHERIFF'S
DEPARTMENT AND MICHAEL
SPELLMAN, Individually**

DEFENDANTS

ORDER

This matter came before the court on the Defendants' Motion to Strike the Amended Complaint, on grounds that it was filed without prior permission of the court. The Plaintiffs argue that the amendment should have been permitted as of right, because it was sent to the court prior to their receipt of the Defendants' Answer. A review of the docket shows that the Amended Complaint was entered a day after the Answer. A review of the individual pleadings shows that the Certificate of Service on the Answer indicates that it was faxed and mailed to the Plaintiffs on June 21, 2005. The Amended Complaint bears the same date.

Fed. R. Civ. P. 15(a) provides for one amendment as a matter of course "at any time before a responsive pleading is served" Rule 5(b)(2)(B) provides that service by mail is complete on mailing, not only delivery. Service by other electronic means (such as faxing) is adequate only when the person recipient has consented to such service. Fed. R. Civ. P. 5(b)(2)(D). Here, because the case had just begun, the only service of the Answer that was permitted was service by mail. That occurred on the same date as the date of the amendment. The court is not willing to further investigate the exact times that each event occurred, but will consider that the amendment is proper as being made as a matter of right under Rule 15. In any event, because no scheduling order had

been entered, leave to amend should be liberally allowed and would likely have been granted, had the Plaintiffs requested it.

IT IS, THEREFORE, ORDERED, that the Motion to Strike the Amended Complaint is hereby **denied**.

IT IS SO ORDERED, this the 13th day of January, 2006.

S/Alfred G. Nicols, Jr.

UNITED STATES MAGISTRATE JUDGE